

State of California  
STATE BOARD OF EQUALIZATION  
SALES AND USE TAX REGULATION

**Regulation 1540. ADVERTISING AGENCIES AND COMMERCIAL ARTISTS.**

*Reference:* Sections 6006, 6010.3, 6010.30, and 6015, Revenue and Taxation Code  
*Preston v. State Board of Equalization* (2001) 25 Cal. 4<sup>th</sup> 197, 105 Cal. Rptr. 2<sup>d</sup> 407.

**(a) DEFINITIONS.**

(1) **ADVERTISING.** Advertising is commercial communication utilizing one or more forms of communication (such as television, print, billboards, or the Internet) from or on behalf of an identified person to an intended target audience.

(2) **ADVERTISING AGENCIES.** Advertising agencies design and implement advertising campaigns for purposes of advertising the goods, services, or ideas of their clients. As part of that primary function, advertising agencies provide their clients with services (such as consultation, consumer research, media planning and placement, public relations, and other marketing activities), and may also provide tangible personal property (such as print advertisements, finished art, and video and audio productions).

(3) **COMMERCIAL ARTISTS.** Commercial artists, who may characterize themselves as commercial artists, commercial photographers, or designers, provide services and tangible personal property to their clients for use in their clients' advertising campaigns, or for their clients' other commercial endeavors such as sales of copies of finished art (including, e.g., photographic images) provided by a commercial artist. Services they provide to their clients include the creation and development of ideas, concepts, looks, or messages. Electronic artwork they provide may be transferred through remote telecommunications such as by modem or over the Internet, or by tangible means through electronic media such as compact or floppy disc. Tangible personal property they provide may include electronic media on which electronic artwork is transferred to the client, hard copies of the electronic artwork, hard copies of finished art (which may consist of photographic images).

(4) **CONTRACT OF SALE.** An agreement to transfer tangible personal property for consideration is a contract of sale. The client may, for example, issue a purchase order for the purchase of tangible personal property. The contract of sale for that tangible personal property consists of the terms of the purchase order together with the relevant terms of the master agreement (defined in subdivision (a)(10)).

(5) **DIGITAL PRE-PRESS INSTRUCTION.** Digital pre-press instruction is the creation of original information in electronic form by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press, which is then transferred on electronic media such as tape or compact disc.

(6) **ELECTRONIC ARTWORK.** Electronic artwork is artwork created through the use of computer hardware and software processes which results in artwork in a digital format that can be transmitted to others via electronic means (that is, transmitted through remote telecommunications such as by modem or over the Internet, or by electronic media such as compact or floppy disc). Elements of the process include the creation of original artwork or photographic images, scanning of artwork or photographic images, composition and design of text, insertion and manipulation of scanned and original electronic artwork, photographic images, and text. Electronic artwork does not include artwork that is transferred to clients in a tangible form, other than on electronic media, even where such artwork may have been manufactured or produced in whole or in part by computer hardware and software processes.

(7) **FINISHED ART.** Finished art is the final artwork used for actual reproduction by photomechanical or other processes, or used for display. It includes electronic artwork, illustrations (e.g. drawings, diagrams, halftones, or color images), photographic images, sculptures, paintings, and handlettering. Blueprints, diagrams, and instructions for signage furnished to a client as the result of environmental graphic design services are not finished art.

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(8) **HARD COPIES.** An item is transferred on hard copy when it is transferred on any tangible personal property other than in digital format on electronic media. For example, finished art transferred on canvas or paper is transferred on hard copy while a transfer of finished art in digital format on compact or floppy disc is not regarded as a transfer on hard copy.

(9) **INTERMEDIATE PRODUCTION AIDS.** Intermediate production aids include items such as artwork, illustrations, photograph images, photo engravings, and other similar materials which are used to produce special printing aids or finished art.

(10) **MASTER AGREEMENT.** A master agreement is a contract, however characterized (such as “agency-client agreement”), entered into between an advertising agency or commercial artist and its client which specifies the obligations of each party to the master agreement with respect to their relationship, whether for a specified time or advertising campaign or until one of the parties terminates the agreement. A master agreement between an advertising agency and its client may specify the obligations of each with respect to the design of an advertising campaign for the client, the placement of the advertising with print and television media, and for the sale and purchase of tangible personal property related to the advertising campaign. There may then be additional terms for the purchase of specific tangible personal property during the advertising campaign, such as in a purchase order, which identifies the specific property that will be purchased and sold and the sales price for that property.

(11) **PRELIMINARY ART.** Preliminary art is tangible personal property which is prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into, or before approval is given, for preparation of finished art provided neither title to, nor permanent possession of, such tangible personal property passes to the client. Examples of preliminary art include roughs, visualizations, layouts, comprehensives, and instant photos.

(12) **SPECIAL PRINTING AIDS.** Special printing aids are reusable manufacturing aids which are used by a printer during the printing process and are of unique utility to a particular client. Special printing aids include electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, film, single or multi color separation negatives, and flats.

(13) **THIRD PARTIES.** A reference in this regulation to a transfer to a client also includes a transfer to a third party on the client's behalf. For example, the discussion in subdivision (b)(2)(B) for transfers of finished art by loading into the client's computer also includes transfers of the finished art by loading it into a third party's computer at the instruction of the client.

### **(b) APPLICATION OF TAX TO ACTIVITIES OF ADVERTISING AGENCIES AND COMMERCIAL ARTISTS.**

#### **(1) SERVICES.**

##### **(A) General.**

1. Services performed to convey ideas, concepts, looks, or messages to a client may result in a transfer, enhancement, or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are separately stated as “design charges,” “preliminary art,” “concept development,” or any other designation that clearly indicates that the charges are for such services and not for finished art, they are nontaxable; however, tax applies if: (a) the master agreement or other contract provides that the advertising agency or commercial artist will pass to the client title or the right to permanent possession of the artwork in tangible form, such as on electronic media or hard copy, or (b) permanent possession of the artwork in tangible form is transferred to the client. If the master agreement provides that the client owns the concepts embodied in tangible personal property that is owned and possessed by the advertising agency or commercial artist (e.g., so that such concepts cannot be used on behalf of any other person), that contract provision does not constitute the passage of title to tangible personal property to the client. A requirement that an advertising agency or commercial artist retain permanent possession of the artwork in tangible form does not itself constitute a sale of that property to the client in the absence of a provision passing title to such property to the client.

2. Tangible personal property developed and used during services performed to convey ideas, concepts, looks, or messages is consumed in the performance of those services. Unless, prior to any use, the advertising agency or commercial artist passes title to such property to the client as discussed in the previous paragraph, the advertising agency or commercial artist is the consumer of such tangible personal property used and tax applies to the sale of property to, or to the use of the property by, the advertising agency or commercial artist. If

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the advertising agency or commercial artist passes title to, or permanent possession of, such tangible personal property to its client, tax applies to the sale of the tangible personal property by the advertising agency or commercial artist to the client.

**(B) Digital Pre-Press Instruction.** Digital pre-press instruction is a custom computer program under section 6010.9 of the Revenue and Taxation Code, the sale of which is not subject to tax, provided the digital pre-press instruction is prepared to the special order of the purchaser. Digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a “canned” or prewritten computer program which is held or existing for general or repeated sale or lease, even if the digital pre-press instruction was initially developed on a custom basis or for in-house use. The sale of such canned or prewritten digital pre-press instruction in tangible form is a sale of tangible personal property, the retail sale of which is subject to tax.

**(C) Retouching Photographic Images.** Retouching a photographic image for the purpose of repairing or restoring the photograph to its original condition is a repair, the charge for which is not taxable.

**(D) Signage.** The creation and providing of single copies of blueprints, diagrams, and instructions for signage as a result of environmental graphic design is a service the charge for which is not taxable. Charges for additional copies are taxable.

**(E) Websites.** The design, editing, or hosting of an electronic website in which no tangible personal property is transferred to the client is a service, the charge for which is not subject to tax.

**(F) Specific Nontaxable Charges.** The following and similar fees and commissions are not taxable when they are separately stated. Whether separately stated or not, these fees and commissions are not included in the calculation of “direct labor” for purposes of subdivision (b)(3).

1. Media commissions or fees received for placement of advertising whether paid by the medium, by another advertising agency, or by the client.
2. Commissions or fees paid to advertising agencies by suppliers. Examples of such commissions are those paid to an advertising agency by a premium manufacturer (or distributor) or a direct-by-mail supplier.
3. Consultation and concept development fees related to client discussion, development of ideas, and other services. If the advertising agency transfers to the client tangible personal property produced as a result of these services, the transfer is incidental to the advertising agency’s providing of the service and is not a sale of that tangible personal property; the advertising agency is the consumer of tangible personal property transferred to the client incidental to the providing of a service.
4. Fees for research or account planning that entail consumer research and the application of that research to the client’s business or industry.
5. Fees for quality control supervision that entails the proofing and review of printing and other products provided by outside suppliers.
6. Charges for the formulation and writing of copy.

**(G) Example.** A designer contracts to create and sell printed brochures to a law firm. The contract separately states a charge for design, for art direction, for preliminary art, and for the printed brochures. The designer’s design and art direction services culminate in the creation of preliminary art that the designer uses to show the designer’s concepts to the law firm. After the law firm approves the concepts, the designer finalizes the design of the brochure and contracts with a printer to print the brochures. The printer sells the printed brochures to the designer for resale, and the designer resells the printed brochures to the law firm. The only tangible personal property that will be transferred to the law firm (or to anyone on behalf of the law firm) are the printed brochures. The law firm will not obtain title to, or the right to possession of, any finished art or any other tangible personal property. Tax does not apply to the designer’s separately stated charges for design, art direction, and preliminary art. Tax applies to the designer’s separately stated charge to the law firm for the printed brochures.

### **(2) FINISHED ART.**

**(A) Use of Aids in Creation of Finished Art.** If the advertising agency or commercial artist uses any intermediate production aids or special printing aids in the creation of the finished art, the presumptions with respect

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to passage of title and the calculation of the measure of tax on the sale of such aids by the advertising agency or commercial artist, is governed by the provisions of Regulation 1541 applicable to special printing aids.

**(B) Transfers of Electronic Artwork.** A transfer of electronic artwork in tangible form is a sale. However, a transfer of electronic artwork from an advertising agency or commercial artist to the client or to a third party on the client's behalf that is not in tangible form is not a sale of tangible personal property, and the charges for the transfer are not subject to tax. A transfer of electronic artwork is not in tangible form if the file containing the electronic artwork is transferred through remote telecommunications (such as by modem or over the Internet), or if the file is loaded into the client's computer by the advertising agency or commercial artist, and the client does not obtain title to or possession of any tangible personal property, such as electronic media or hard copy. If the transfer is not a transfer in tangible form because it is loaded onto the client's computer, the advertising agency or commercial artist should document that transfer by a written statement signed at the time of loading by the client and by the person who loaded the electronic artwork into the client's computer with the following or similar language: "This electronic artwork was loaded into the computer of [client's name] by [advertising agency's or commercial artist's name], and [advertising agency's or commercial artist's name] did not transfer any tangible personal property containing the artwork, such as electronic media or hard copies, to [client's name]." When such a statement is signed at the time the file is loaded, it will be rebuttably presumed that the transfer of electronic artwork was not transferred in tangible form. If there is no such timely completed statement, the advertising agency or commercial artist may provide other substantive evidence establishing that the artwork was not transferred in tangible form.

**(C) Transfers of Finished Art in Tangible Form.** The electronic or manual preparation of finished art for use in reproduction or display is not a service. Unless the transfer is not in tangible form as explained in subdivision (b)(2)(B), the transfer of finished art is a sale of tangible personal property and tax applies to charges for that finished art, including all charges for any rights sold with the finished art, such as copyrights or distribution and production rights, except as provided in subdivision (b)(2)(D)2.

1. **Combined Charge for Finished Art and Conceptual Services.** If charges for finished art are combined into a single charge that also includes nontaxable charges for conceptual services described in subdivision (b)(1)(A), the advertising agency or commercial artist may report the measure of tax on the retail sale of the finished art as specified in subdivision (b)(3), provided that the reported measure of tax must also include the value of reproduction rights included with the transfer except those that are not taxable as provided in subdivision (b)(2)(D)2.

2. **Lump Sum Billing - 75/25 Presumption.** If tax is not reported as provided in the previous paragraph, it will be rebuttably presumed that 75 percent of the combined charge for the finished art and conceptual services is for the nontaxable services and that 25 percent of the combined charge is the measure of tax on the retail sale of the finished art. However, if the sales price to the advertising agency or commercial artist of the finished art (or component parts) and any intermediate production aids or special printing aids sold to the client for that combined charge is more than 25 percent of the combined charge to the client, the measure of tax is the sales price of the tangible personal property to the advertising agency or commercial artist.

### **(D) Reproduction Rights Transferred With Finished Art.**

1. Charges for the transfer of possession in tangible form to the client or to anyone else on the client's behalf of finished art for purposes of reproduction are included in the measure of tax on that sale, including all charges for the right to use that property, even though there is no transfer of title to the person reproducing the finished art, except as provided in subdivision (b)(2)(D)2.

2. Any agreement evidenced by a writing (such as a contract, invoice, or purchase order) that assigns or licenses a copyright interest in finished art for the purpose of reproducing and selling other property subject to the copyright interest is a technology transfer agreement, as explained further in Regulation 1507. Tax applies to amounts received for any tangible personal property transferred as part of a technology transfer agreement. Notwithstanding subdivision (b)(2)(C), tax does not apply to temporary transfers of computer storage media containing finished art transferred as part of a technology transfer agreement. Tax does not apply to amounts received for the assignment or licensing of a copyright interest as part of a technology transfer agreement. The measure of tax on the sale of finished art transferred by an advertising agency or commercial artist as part of a technology transfer agreement shall be:

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a. The separately stated sales price if the finished art is permanently transferred, or the separately stated lease price if the finished art is temporarily transferred; provided that the separately stated price is reasonable;

b. Where there is no such separately stated price, the separate price at which the person holding the copyright interest in the finished art has sold or leased that finished art or like finished art to an unrelated third party where: 1) the finished art was sold or leased without also transferring an interest in the copyright; or 2) the finished art was sold or leased in another transaction at a stated price satisfying the requirements of subdivisions (b)(2)(D)2.a.; or

c. If there is no such separately stated price under subdivision (b)(2)(D)2.a., nor a separate price under subdivision (b)(2)(D)2.b., 200 percent of the combined cost of materials and labor used to produce or acquire the finished art. "Cost of materials" consists of the costs of those materials used or incorporated into the finished art, or any tangible personal property transferred as part of the technology transfer agreement. "Labor" means any charges for labor used to create such tangible personal property where the advertising agency or commercial artist purchases such labor from a third party, or the work is performed by an employee of the advertising agency or commercial artist.

(3) **SALES OF OTHER TANGIBLE PERSONAL PROPERTY BY ADVERTISING AGENCY OR COMMERCIAL ARTIST.** Tax applies to the total charge for the retail sale of tangible personal property by an advertising agency or commercial artist. If an advertising agency or commercial artist combines charges for nontaxable services as defined in subdivision (b)(1)(F), such as media placement, with charges for tangible personal property for which the advertising agency or commercial artist is the retailer, the measure of tax on that retail sale of property includes the total of: direct labor; the cost of purchased items that become an ingredient or component part of the tangible personal property; the cost of any intermediate production aids or special printing aids; and a reasonable markup. Commissions, fees, and other charges exclusively related to the production or fabrication of tangible personal property are part of direct labor and are thus included in the measure of tax. Such charges include retouching of photographic images or other artwork for reproduction, provided the retouching is intended to improve the quality of the reproduction. An advertising agency or commercial artist must keep sufficient records to document the basis for the reported measure of tax.

(4) **ITEMS PURCHASED BY AN ADVERTISING AGENCY OR COMMERCIAL ARTIST.** Except when property is resold prior to any use, an advertising agency or commercial artist is the consumer of tangible personal property used in the operation of its business. Tax applies to the sale of such property to, or to the use of such property by, the advertising agency or commercial artist.

### **(c) SITUATIONS SPECIFIC TO ADVERTISING AGENCIES.**

(1) **ADVERTISING AGENCY ACTING AS AN AGENT FOR ITS CLIENT.** An agent is one who represents another, called the principal, in dealings with third persons. (Civil Code section 2295.) To the extent that an advertising agency acts as the agent of its client when acquiring tangible personal property, it is neither a purchaser of the property with respect to the supplier nor a seller of the property with respect to its principal (that is, its client). Because of the unique relationship between advertising agencies and their clients, unless an advertising agency elects non-agent status under subdivision (c)(2)(A) or is otherwise the retailer of the property under subdivision (c)(2)(B) or (c)(2)(C), it is rebuttably presumed that the advertising agency acts as the agent of its client when acquiring tangible personal property on its client's behalf.

**(A)** A supplier of tangible personal property to an advertising agency is presumed to have made a retail sale of that property unless the supplier takes a timely and valid resale certificate in good faith from the advertising agency. Otherwise, the supplier has the burden of establishing that the advertising agency elected non-agent status under subdivision (c)(2)(A) and resold the property or that the advertising agency resold the property as the retailer under subdivision (c)(2)(B) or (c)(2)(C).

**(B)** When an advertising agency is the agent of its client for the purchase of tangible personal property under subdivision (c)(1), sales or use tax is due on the purchase price from the supplier to the advertising agency. Tax does not apply to the charge made by an advertising agency to its client for reimbursement, including tax reimbursement, for the amount charged by a supplier, nor does tax apply to the advertising agency's separately stated charges for its services directly related to its acquisition of such tangible personal property (e.g., when the advertising agency makes a separately itemized charge for reimbursement of the amount paid to the supplier of the

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property, tax does not apply to a separately itemized “agency fee”). When the applicable tax is use tax and the advertising agency does not pay that use tax to the supplier on the client’s behalf, the advertising agency is liable for the use tax and must report and pay the use tax to the Board. The advertising agency’s liability for that use tax is not extinguished unless the client has self-reported and paid the tax to the Board.

**(C)** An advertising agency may not issue a resale certificate when purchasing tangible personal property as the agent of its client. An advertising agency who issues a resale certificate to a supplier is presumed to be purchasing tangible personal property from that supplier on its own behalf for resale and not to be acting as an agent of its client. However, the advertising agency may provide evidence to prove that its issuance of the resale certificate was erroneous and that the advertising agency was acting as an agent of its client, provided the advertising agency has not treated the transaction as its own sale of tangible personal property to its client, collecting tax or tax reimbursement from its client on that sale. If the resale certificate was issued in error, the advertising agency is liable for use tax on the cost of tangible personal property purchased under the certificate unless the advertising agency has already paid that tax to the supplier or to the Board, or the client has self-reported and paid the tax to the Board.

**(2) ADVERTISING AGENCY ACTING AS A RETAILER.** An advertising agency that acts as a retailer of tangible personal property may issue a resale certificate for such tangible personal property if the property will be resold prior to any use. Absent an agreement that the property will be sold prior to use, tax is due on the purchase price of tangible personal property that is used prior to being resold to the client and, in addition, tax is also due on the sales price of the tangible personal property to the client.

**(A) Election of Non-Agent Status.** An advertising agency may elect non-agent status with respect to sales of tangible personal property to its client. This election must be supported by a specific written statement in its master agreement with the client. Alternatively, a statement may be included on an advertising agency’s job order or invoice to its client. Statements should include the following or similar language: “(Advertising Agency’s name) will not be acting as an agent of (client’s name) for purposes of this transaction.”

An advertising agency that elects non-agent status is a retailer with respect to tangible personal property sold to its clients. The measure of tax on the advertising agency’s retail sale is the separately stated charge for the tangible personal property. If there is no such separately stated charge, the measure of tax is calculated as provided in subdivision (b).

**(B) Items Produced or Fabricated by an Advertising Agency In-House.** Advertising agencies are retailers of tangible personal property they produce or fabricate, e.g., by their own employees. Advertising agencies are not agents of their clients with respect to the acquisition of materials incorporated into such items of tangible personal property they produce or fabricate, but instead are the retailers of such property. The measure of tax on their retail sale of that property is the separately stated charge for the property sold. If there is no such separately stated charge, the measure of tax is calculated as provided in subdivision (b).

**(C) Invoice to Client for More Than Cost of Tangible Personal Property to Advertising Agency.** When an advertising agency invoices its client for tangible personal property provided by the advertising agency without separately stating the amount paid to the supplier for that property, the advertising agency is the retailer of the tangible personal property to its client. For example, when the advertising agency invoices a single charge to its client for tangible personal property that includes the amount paid to the supplier for the tangible personal property together with a markup, the advertising agency is the retailer of that tangible personal property and tax applies to that separately stated charge. If the advertising agency makes a combined charge to its client that includes the charge for the tangible personal property as well as the charge for any nontaxable services or reproduction rights under subdivision (b), the advertising agency is the retailer of the tangible personal property provided and the measure of tax on the sale of that tangible personal property is calculated as provided in subdivision (b).

**(d) TRANSFERS BY AN ARTIST AT A SOCIAL GATHERING.** The transfer of original drawings, sketches, illustrations, or paintings by an artist at a social gathering for entertainment purposes is not a sale or use or purchase of tangible personal property, and the artist is the consumer of any property so transferred, when all the following requirements are satisfied:

(1) Eighty percent or more of the drawings, sketches, illustrations, or paintings are delivered by the artist to a person or persons other than the purchaser;

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(2) Eighty percent or more of all of the drawings, sketches, illustrations, or paintings are received by a person or persons, other than the purchaser, at no cost to the person or persons who become the owner of the drawings, sketches, illustrations, or paintings;

(3) The charge for the drawings, sketches, illustrations, or paintings is based on a preset fee; and

(4) The preset fee charged for the drawings, sketches, illustrations, or paintings is contingent upon a minimum number of at least three drawings, sketches, illustrations, or paintings to be produced by the artist at the social gathering.

### **(e) CHARGES AND TRANSACTIONS GOVERNED BY OTHER REGULATIONS.**

(1) AUDIO PRODUCTIONS. Tax applies to charges for an audio production obtained or furnished by an advertising agency to its client as provided in Regulation 1527.

(2) PHOTOGRAPHY. Tax applies to charges for photography as provided in Regulation 1528 except when the photographic image is furnished by a commercial artist as defined in subdivision (a)(3).

(3) PRINTED SALES MESSAGES. Qualifying sales of printed sales messages may qualify for exemption, as explained in Regulation 1541.5.

(4) TYPOGRAPHY. Tax applies to charges for typography or composed type obtained from outside suppliers as provided in Regulation 1541.

(5) VIDEO OR FILM PRODUCTIONS. When a video or film production obtained or furnished by an advertising agency to its client constitutes qualified production services as defined in Regulation 1529, tax applies to the charges for such qualified production services as provided in Regulation 1529.

*History:* Amended December 14, 1949.

Amended September 13, 1961.

Amended June 20, 1967.

Amended October 8, 1968.

Amended by renumbering November 3, 1971, effective December 3, 1971.

Amended November 14, 1974, effective December 22, 1974. Rewrote regulation, added section on agency status of ad agencies, detailed taxable status of specific services and expenses, changed taxable status of "copy writing," and defined "fee."

Amended March 9, 1976, effective April 18, 1976. Defined when use of photographs is a product ingredient.

Amended June 22, 1983, effective October 6, 1983. In subsection (a)(2)(A) added last two sentences to second paragraph. In subsections (b)(1) and (b)(2), added cross reference to subsection (a)(2) and deleted former last sentence of subsection (b)(2) relating to resale certificates.

Amended February 2, 1994, effective June 22, 1994. Added clarifying language to accommodate tax application to preliminary art prepared on data processing equipment.

Amended January 5, 2000, effective April 23, 2000. Subdivision (a): In the title the word "Agency" changed to "Agencies," and phrase "as Agent of ... Non Agent" deleted. Subdivision (a)(1): former language deleted and new language "Advertising ... nontaxable" added; also language of first un-numbered paragraph deleted and replaced with phrase "Application ... client." Subdivision (a)(2) former title "Determination of Status" deleted and new title "Specific Situations" added. Subdivision (a)(2)(A) former title "Items Acquired from Outside Sources" deleted and new title "Electronic or Digital Artwork" added; also former language deleted and new language "Electronic ... text" added; language of former first un-numbered paragraph deleted and replaced with "A transfer ... is nontaxable;" and language of former second un-numbered paragraph deleted and replaced with "A transfer ... in subdivision (d)(2)." Subdivision (a)(2)(B) former title "Items Prepared by Agency" deleted and new title "Agency Acting as an Agent for Its Client" added; also former language deleted and replaced with "As agent ... its client;" and two new un-numbered paragraphs added. New Subdivision (a)(3) titled "Advertising Agencies Acting as Retailers" added. Subdivision (b) former title deleted and new title "Lump-Sum Sales of Tangible Personal Property" added. Subdivision (b)(1) former language deleted and replaced with "An agency that ... to a supplier;" also former language of first un-numbered paragraph deleted and replaced with "On sales...nontaxable services;" and former third and fourth un-numbered paragraphs deleted. Subdivision (b)(2) former title "Agency Acting as Agent" deleted and new title "Taxable Selling Price" added; also former language deleted and replaced with "If advertising ... selling price;" and first un-numbered paragraph deleted. Subdivision (b)(3) former title "Services and Expenses – When Nontaxable" deleted and new title "Specific Nontaxable Charges" added. also former language deleted and replaced with "The following ... in subdivision (b)(2)" added. New Subdivisions (b)(3)(A) through (b)(3)(G) added. Subdivision (b)(4) former title "Specific Applications" deleted and new title "Taxable Charges for Agencies

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Acting as Retailers" added; also new language "All other ...not taxable" added. Former subdivisions (b)(4)(A) through (b)(4)(L) deleted. New subdivision (b)(5) added. Subdivision (c) former language deleted; also replaced the language of first un-numbered paragraph with "General. ... 'finished art;'" and new second un-numbered paragraph added. Subdivision (d) former title "Items Purchased by Agency or by Artist or Designer" deleted and new title "Application of Tax to Commercial Artists, Designers and Advertising Agencies" added; also former language deleted. New Subdivisions (d)(1) to (d)(5) added. New Subdivision (e) added.

Amended May 29, 2002, effective October 3, 2002. Language of former regulation deleted and replaced in its entirety.

*Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.*